

1 Look up my case and you'll see I was done wrong cause of my past. ...
2 I took this case to get my X wife out so she could get our little baby
3 girl. She was 5 years old at that time. ... That's why I took that
4 deal but I should have took that deal cause they didn't have nothing.
5 ... Now I got Valley Feaver." [Petition at 5]. For the following
6 reasons, the petition is dismissed without prejudice and with leave to
7 amend.

8 To begin with, the petition fails to satisfy Rule 2(c) of the
9 Rules Governing Section 2254 Cases, which requires that a petition for
10 a writ of habeas corpus "specify all the grounds for relief which are
11 available to the petitioner" and "state the facts supporting each
12 ground." Petitioner's allegations are rambling and he fails to clearly
13 set forth the legal and factual basis for his claim(s) for relief.

14 To the extent the Court can decipher petitioner's claim, it fails
15 to state a cognizable claim for relief. Federal habeas corpus relief
16 is available only for violations of the Constitution, laws or treaties
17 of the United States. Swarthout v. Cooke, 562 U.S. 216, 219 (2011);
18 Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Nowhere does petitioner
19 allege that he was deprived of any federally protected right.

20 Liberally construing the petition, it appears that petitioner may
21 assert that his plea was not knowingly or intelligently made because
22 when he entered it, he erroneously believed that he would be eligible
23 for half-time sentence credits. So construed, petitioner might raise
24 a cognizable federal claim for relief. See Boykin v. Alabama, 395 U.S.
25 238 (1969). Nevertheless, it does not appear that any such claim has
26 been exhausted. See 28 U.S.C. § 2254(b); O'Sullivan v. Boerckel, 526
27 U.S. 838, 842 (1999). The exhaustion requirement is satisfied when the
28 substance of a petitioner's federal claim has been fairly presented to

1 the state's highest court. Davis v. Silva, 511 F.3d 1005, 1008-1009
2 (9th Cir. 2008). Petitioner does not allege, and there is no
3 indication in the California Supreme Court docket, that he filed any
4 petition in the California Supreme Court challenging his 2003
5 conviction. See <http://appellatecases.courtinfo.ca.gov>. Thus, it does
6 not appear that petitioner has exhausted his state court remedies with
7 respect to any claim.

8 Finally, from the face of the petition, it appears that it is
9 barred by the one-year period of limitation set forth in the AEDPA.
10 28 U.S.C. § 2244(d)(1). Petitioner was convicted sometime in 2003.
11 [Petition at 1]. Because he did not appeal, his conviction became
12 final sixty days after entry of judgment, when his time to appeal
13 expired. See 28 U.S.C. § 2244(d)(1)(A) (judgment becomes final "by the
14 conclusion of direct review or the expiration of the time for seeking
15 such review"); Cal. R. Ct. 8.308(a) (notice of appeal must be filed
16 within 60 days of judgment); Roberts v. Marshall, 627 F.3d 768, 771
17 (9th Cir. 2010) (noting that petitioner's "state court conviction
18 became final on ... the date on which his time for seeking review of
19 his conviction expired"), cert. denied, 132 S.Ct. 286 (2011). Thus,
20 petitioner had until sometime in 2004 (or at the latest, the first
21 sixty days in 2005), to file a federal petition. See Patterson v.
22 Stewart, 251 F.3d 1243, 1245-1246 (9th Cir.), cert. denied, 534 U.S.
23 978 (2001).

24 This petition was not filed until January 5, 2016, twelve years
25 after the limitation period expired. Absent grounds for tolling of
26 the limitation period, the petition is time-barred.

27 Petitioner does not allege any facts suggesting the limitation
28 period was statutorily tolled. See 28 U.S.C. § 2244(d)(1) & (d)(2).

1 Further, petitioner has not provided an adequate explanation for the
2 lengthy delay in filing his federal habeas petition which might
3 entitle him to equitable tolling of the one year statute of
4 limitation. Equitable tolling is warranted only if a petitioner shows
5 "(1) that he has been pursuing his rights diligently, and (2) that
6 some extraordinary circumstance stood in his way." Holland v. Florida,
7 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuiglielmo, 544 U.S. 408,
8 418 (2005)). Petitioner must show that his untimely filing was caused
9 by the extraordinary circumstances rather than the petitioner's own
10 lack of diligence in pursuing his rights. Ford v. Gonzalez, 683 F.3d
11 1230, 1237 (9th Cir.), cert. denied, 133 S.Ct. 769 (2012); see Randle
12 v. Crawford, 604 F.3d 1047, 1057 (9th Cir.) (explaining that equitable
13 tolling is only appropriate if "extraordinary circumstances beyond a
14 prisoner's control make it impossible to file a petition on time")
15 (quotation marks and citation omitted), cert. denied, 562 U.S. 969
16 (2010).

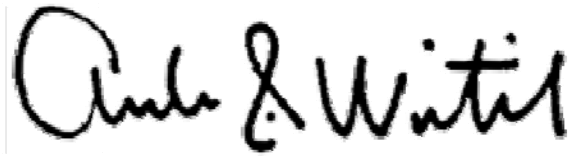
17 Based upon the foregoing deficiencies, the petition is dismissed
18 without prejudice and with leave to amend. Petitioner has twenty-eight
19 (28) days from the date of this order within which to file an amended
20 petition curing the deficiencies noted above. The amended petition
21 must be filed on the forms provided by the Clerk and bear the case
22 number CV 16-1916-JFW(AJW). The amended petition must include the
23 specific legal and factual basis for each of petitioner's claims for
24 relief, as well as indicate whether each of those claims has been
25 presented to the California Supreme Court. In addition, petitioner
26 must (1) make clear the dates on which any state court petition was
27 filed, the claims raised in any such petition, and if possible, attach
28 copies of any state petition and the state court's decision addressing

1 each petition and (2) describe specifically the nature and duration of
2 any extraordinary circumstances which petitioner believes impeded his
3 ability to timely file this federal petition.

4 Petitioner is cautioned that failure to file an amended petition
5 within the time provided may result in dismissal of this petition
6 without prejudice.

7 IT IS SO ORDERED.

8 Dated: April 4, 2016
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A handwritten signature in black ink, appearing to read "Andrew J. Wistrich". The signature is written in a cursive, flowing style.

10 Andrew J. Wistrich
11 United States Magistrate Judge
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